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EXAMINER
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HARPER, V PAUL

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/734,826  
Filing Date: December 11, 2000  
Appellant(s): FIEDLER, THOMAS

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For Appellant

**EXAMINER'S ANSWER**

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This is in response to the appeal brief filed 6/17/2004.

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

No amendment after final has been filed.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

**(7) Grouping of Claims**

The rejection of claims 1-6 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

**(8) Claims Appealed**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) Prior Art of Record**

US 4,961,177	Uehara	10-1990
DE 4028670 A1	Schaffrina, Joerg	02-1992

Japanese patent application publication 11-249227, Shirai et al., September 17, 1999.  
Shneiderman, Ben, "Touchscreens now offer compelling uses" IEEE Software Vol. 8,  
No. 2, March 1991, pp. 93-94

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Uehara (U.S. 4,961,177) in view of Shirai et al. (JP 411249227A), hereinafter referred to as Shirai, and further in view of Schaffrina (DE 4028670 A1).

Regarding claim 1, Uehara discloses a method for inputting a voice control through a microphone and includes the following: **"functions which may be activated by control commands of which each one is formed at least by one spoken word from a user of the apparatus"** (col. 2, lns. 34-40); **"speech signal input means for inputting speech signals into the apparatus which represent the spoken speech commands"** (col. 2, lns. 29-31, Fig. 1, item 12, a microphone); **"control means connected to the speech signal input means by which control means can be generated control data representing a speech command"** (Fig. 1, item 18, a controller, item 16, col. 3, lns. 31-33, e.g., controlling door, item 36)); **"halting means to which the speech signal input means are mechanically connected, so that the speech signal input means in the presence of a user take up a certain position relative to the user's mouth"** (in Figs. 1 and 2 the servo mechanism, item 14, is connected to the microphone, item 12, and adjusts its position, col. 2, lns. 41-50); **"characterized in that the apparatus includes guide means by which the halting means are at least in essence guided in vertical direction and in that the apparatus includes adjusting means by which the halting means can be adjusted along the guide means"** (Fig. 2, col. 2, lns. 41-50 where the servomechanism operates to adjust the direction of the microphone); **"picture recording means . . . by**

**which a certain body area of a user can be recorded, and in that picture evaluation means are provided by which can be established whether the recorded body area lies within a nominal range (XY) and in that in the event of deviations of the position of the recorded body area relative to the nominal range (XY) the adjusting means are provided for adjusting the halting means and, consequently, the connected speech signal input means . . . can be driven by the picture evaluation means (33) to adjust the picture recording means (31) so that the recorded body area lies within the nominal range (XY)” (Figs. 2 and 3, col. 2, ln. 41 through col. 3, ln. 11 where image processing is used to determine the position of the mouth and determines the direction of the microphone). But Uehara does not specifically teach “picture recording means are provided which are mechanically connected to the halting means ... consequently, the . . . picture recording means can be driven by the picture evaluation means to adjust the picture recording means so that the recorded body area lies within the nominal range (XY).”**

However, the examiner contends that this concept was well known in the art, as taught by Shirai.

In the same field of endeavor, Shirai discloses an image pickup position-adjusting device that vertically moves a camera according the output of a controller so that the subject is in a set position (English abstract, ¶ 10, Figs. 1, 2, and 5).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Uehara by specifically providing the ability to

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position the picture recording device, as taught by Shirai, since this will improve the accuracy of the images obtained (¶s 9 and 10).

Furthermore, Uehara in view of Shirai does not specifically teach **“the connected speech signal input means and picture recording means.”** However, the examiner contends that this concept was well known in the art, as taught by Schaffrina.

In the same field of endeavor, Schaffrina discloses a telephone kiosk with a video camera and a microphone mounted in a module that is height adjustable (English abstract, col. 1, lns. 40-55).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Uehara in view of Shirai by specifically mounting the picture recording means and the speech signal input means in a fixed structure, as taught by Schaffrina, since it was well-known that closer proximity of both a camera and a microphone will improve the quality of the data obtained by each device.

Regarding claim 2, Uehara in view of Shirai and Schaffrina teach everything claimed, as applied above (see claim 1). Furthermore, Uehara teaches **“the apparatus additionally includes speech signal output means for delivering speech signals”** (Figs. 1 and 2, items 26 and 28, audio response unit). But Uehara in view of Shirai and Schaffrina do not specifically teach **“the speech signal output means are mechanically connected to the halting means.”** However, the examiner contends that this concept was well known in the art, as taught by Schaffrina.

Schaffrina further discloses that the height adjustable module includes a speaker (English abstract, col. 1, Ins. 40-55).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Uehara in view of Shirai and Schaffrina by specifically providing a speaker connected to the halting means, as taught by Schaffrina, since it was well-known that an appropriately positioned speaker results in improved hearing and greater privacy.

Regarding claim 3, Uehara in view of Shirai and Schaffrina teach everything claimed, as applied above (see claim 1). But Uehara in view of Shirai and Schaffrina do not specifically teach **“that the apparatus includes input means for inputting alphanumerical signs and in that the input means are mechanically connected to the halting means.”** However, the examiner contends that this concept was well known in the art, as taught by Schaffrina.

Schaffrina further discloses that the height adjustable module includes a keypad (English abstract, col. 1, Ins. 40-55).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Uehara in view of Shirai and Schaffrina by specifically providing a means of inputting alphanumerical signs, as taught by Schaffrina, since it was well-known that keypad entry of alphanumerical signs might be faster than data entry by speech recognition.

Regarding claim 4, Uehara in view of Shirai and Schaffrina teach everything claimed, as applied above (see claim 1). But Uehara in view of Shirai and Schaffrina do



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not specifically teach **“the apparatus includes a communication station for contact-bound communication with a contact-bound chip card and in that the communication station is mechanically connected to the halting means.”**

However, the examiner contends that this concept was well known in the art, as taught by Schaffrina.

Schaffrina further discloses that the height adjustable module includes support for input by means of cards (English abstract, col. 1, Ins. 40-55).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Uehara in view of Shirai and Schaffrina by specifically providing a means of data entry using cards, as taught by Schaffrina, since it was well-known that the use of cards can make some communications interactions more convenient.

Regarding claim 5, Uehara in view of Shirai and Schaffrina teach everything claimed, as applied above (see claim 1). But Uehara in view of Shirai and Schaffrina do not specifically disclose **“that the apparatus includes display means for displaying data and in that the display means are mechanically connected to the halting means.”** However, the examiner contends that this concept was well known in the art, as taught by Schaffrina.

Schaffrina further discloses that the height adjustable module includes a screen (monitor) (English abstract, col. 1, Ins. 40-55, Fig. 1, item 6).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Uehara in view of Shirai and Schaffrina by

specifically providing a monitor, as taught by Schaffrina, since it was well-know that the use of monitor can give a user feedback during data entry and communications making the interactions more reliable.

2. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Uehara in view of Shirai and Schaffrina and further in view of Shneiderman ("Touchscreens now offer compelling uses," March 1991).

Regarding claim 6, Uehara in view of Shirai and Schaffrina teach everything claimed, as applied above (see claim 1). But Uehara in view of Shirai and Schaffrina do not specifically disclose **"that virtual input means can be realized with the display means."** However, the examiner contends that this concept was well known in the art, as taught by Shneiderman.

In the same field of endeavor, Shneiderman teaches the use of a touchscreen for the purpose of inputting alphanumeric data (p. 158, ¶'s 1 and 4, p. 159, ¶ 3, p. 161, ¶ 3 and Fig. 5 where a touchscreen can be used as a virtual input means as interpreted from the specification p. 3, Ins. 20-23).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Uehara in view of Shirai and Schaffrina by specifically providing a touch screen along with a display, as taught by Shneiderman, since it was well-know that the use of a touchscreen with monitor requires less hand-eye coordination than a keyboard (p. 158, ¶'s1-4).

**(11) Response to Arguments**

**Arguments relating to Issue A.**

1. Applicant asserts on page 5:

This passage, however, merely mentions that the Uehara servomechanism 14 points the microphone 12 somewhere within a range (col. 2, line 47: "range") that spans all possible microphone directions. There is no disclosure or suggestion of "in the event of deviations . . . relative to the nominal range -(XY) . . . adjusting . . . to adjust the picture recording means (31) so that the recorded body area lies within the nominal range (XY)" as explicitly required by the language of claim 1.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Uehara teaches that that the "picture processor (detecting means) 24 obtains information related to the position of the person's mouth" (col. 2, line 65-66) and that the "position of the mouth is supplied to the controller (determining means) 18 for determining the direction of the microphone (col. 2, line 67 through col. 3, line 3). As stated in the rejection of claim 1, the adjustment of the picture recording means is taught by Shirai (English abstract, ¶10, Figs. 1, 2, and 5) and the mounting of both the picture recording means and microphone together is taught by Schaffrina (abstract, col. 1, lines 9-12).

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2. Applicant further asserts on page 6:

In view of the above, Shirai and Schaffrina, alone or in combination, cannot make up for the deficiencies in Uehara. ...

. . . picture evaluation means (33) are provided by which can be established whether the recorded body area lies within a nominal range and in that in the event of deviations of the position of the recorded body area relative to the nominal range (XY) the adjusting means (28) are provided for adjusting the halting means (3) and, consequently, the connected speech signal input means and picture recording means (31) can be driven by the picture evaluation means (33) to adjust the picture recording means (31) so that the recorded body area lies within the nominal range (XY)

as explicitly required by the language of claim 1.

Uehara discloses a system where a microphone is automatically movable to improve the quality of the S/N using a picture processor to determine the location of a user's mouth (Fig. 1, col. 5, lines 15-22, Fig. 2, col. 3, lines 50 through col. 4, line 28), and Shirai discloses a system where a camera is automatically movable to adjust an image of a user to the desired body area (i.e, a picture evaluation means to perform an adjustment so that the recorded body area lies within the nominal range; abstract, Fig. 5, 7 and 11, ¶[0010]). In addition, Schaffrina discloses a kiosk where a video camera and a microphone are *mounted together* in a module that is height adjustable to suit the user (abstract, col. 1, lines 40-55) and improve the images being recorded (Schaffrina translation, p. 2, lines 9-12). As argued in the rejection of claim 1, the Examiner maintains that it would have been obvious and desirable to combine the automatic adjustability of Shirai and Uehara with the mounting arrangement of Schaffrina.

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3. Applicant asserts on page 6:

The Advisory Action, in purported response, points out that the Uehara picture processor 24 obtains information relating to the position of the person's mouth and supplies that information to the controller.

It is unclear how this statement could be considered responsive in any substantive sense, at least because the statement sheds no light on how it fairly could be said that Uehara, or any of the other applied references, alone or in combination, discloses or suggests "in the event of deviations . . . relative to the nominal range (XY) . . . adjusting . . . to adjust the picture recording means (31) so that the recorded body area lies within the nominal range (XY)." In particular, there is no disclosure or suggestion of the "nominal range" or of "adjusting" "in the event of deviations" from the "nominal range."

If, for example, Uehara detects a person's mouth and then always moves the **camera** to the center of the detected mouth, there is no disclosure or suggestion of the "nominal range" or of "adjusting" "in the event of deviations" from the "nominal range." (*italics/bold added*)

Uehara detects the position of a person's mouth and adjusts the position of the *microphone* (not the camera as stated above by the Applicant) to cover a range within the voice input area (col. 2, lines 46-49, lines 60-68). It is the combination, as stated in ¶2, above, where the camera and microphone are adjusted to within appropriate range and these adjustments are responsive to an image of the user (see Shirai, abstract, "automatically adjust a camera ...").

4. Applicant asserts on page 7:

Item 2 of the Advisory Action also suggests that the applicant is attacking references individually, but provides no guidance as to how combination of any two or more of the references suggests or gives rise to something not disclosed or suggested in any one of the references. Specifically, it is

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unclear how the "nominal range" springs into being or what about combining any of the references leads one to perform the "adjusting" "in the event of deviations" from the "nominal range." It seems as if the Examiner is trying to bypass these "troublesome" claim limitations as if they did not exist.

As stated in the previous argument, both Uehara and Shirai teach adjustment based on the processing of the camera input where the positioning is necessarily within a "nominal range" based on the requirements of the applications (Uehara, col. 2 line 65 through col. 3, line 2, Fig. 3, "positional information is supplied to the controller ... for determining the direction of the microphone"; Shirai, abstract, "image pickup adjusting ... the position of the camera").

5. Applicant asserts on page 8:

Moreover, the Uehara apparatus is configured to interface with a speaking person without requiring the person to use his or her hands (col. 5, lines 20-22: "even when both hands are occupied, easy entry of an ID number or any other information can be achieved by speaking"; FIG. 1 (no keyboard or keypad); FIG. 2). The system functions automatically with the only user intervention being speech (col. 4, line 29 - col. 5, line 4).

Uehara teaches that the camera input with the image of the user is used to automatically adjust the position of the microphone (col. 2, line 40 through col. 3, line 2).

6. Applicant asserts on page 8:

Item 1 of the Final Office Action says, in effect, that the Shirai automatic adjusting of a camera vertically would have suggested a similar automatic vertical adjustment to the camera 22 in FIG. 2 of Uehara, but

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acknowledges that the combination would still not feature vertical movement of the Uehara microphone 12. To make up for the deficit, Schaffrina is cited, which is directed to a video telephone box having a user panel including a screen and video camera. A microphone is located on either side of the screen. The height of the user panel may be adjusted to suit the user. The user panel allows inputs in the form of push button selections. It is clear from this description and the drawing that the user panel is manually adjusted by the user to match his or her height. By contrast, and as mentioned above, Uehara deals with a system that operates automatically without user intervention other than speech. It is not clear how Schaffrina can be fairly said to teach detachment of the Uehara microphone 12 from its tilting servo mechanism and movement of the detached microphone into fixed connection with the movable camera.

See arguments in ¶2, above, and ¶'s 9 and 8, below.

7. Applicant asserts on page 9:

Uehara, in fact, teaches away from the idea of modifying its microphone configuration. Although Uehara recognizes that voice recognition is a developing area (col. 1, lines 50-52), and that its voice recognition technology may require the speaker to repeat words and to enunciate more slowly (col. 4, lines 53-56), Uehara reveals not the slightest hint that its microphone 12 of sharp directivity is other than optimal (col. 3, lines 41-43: "Control of the direction of the microphone 12, is one of the distinctive features of the present apparatus"; col. 5, lines 11-20: "According to the present apparatus, the microphone 12 with a sharp directivity *can be effectively directed toward the mouth of the person C*, thereby resulting in reliable collection of the speech made by the person at a high S/N ratio. The sharply directional microphone 12 used herewith can be provided at a distance from the person C without any loss in S/N ratio. Consequently, the person can speak unaffected by the presence of the microphone 12, and the person will not feel that he is forced to speak to the system.") (Italics added)

Uehara (col. 3, lines 41-43) does not state that the disclosed configuration is optimal, nor that there is *not* some other way to obtain better results. It should be noted that in

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the above quoted statement from Uehara, "[the microphone] can be *effectively* directed toward the mouth of the person ..." that "effectively directing" is not necessarily the same as "optimally directing."

8. Applicant asserts on beginning on page 9:

In contrast to Uehara's touting of the optimality of its microphone configuration, Schaffrina suggests that its microphones are located "on either side" of the screen, a camera is concealed behind the screen ("Detailed Description"; sixth paragraph), and the height of the user panel embodying the screen may be adjusted by user to suit the user. Since the camera is concealed, presumably then the user either adjusts the panel's vertical location so that either the screen is in optimal visual range, i.e., vertically centered about the user's face, or so that the microphone is in optimal vocal range, i.e., vertically aligned with the user's mouth, or, alternatively, reach some compromise between the two panel positions. The user cannot achieve both optimizations simultaneously, because this would *place the microphone at the bottom the screen*, whereas Schaffrina specifies that the microphone is disposed "on either side" of the screen. It follows that Schaffrina fails to disclose or suggest that both the camera and microphone, while fixed to the same vertical translator, can be simultaneously positioned optimally. Therefore, it appears that item 1 of the Final Office Action is suggesting that motivation would have existed to sacrifice Uehara optimality, assuming one is not selectively ignoring Uehara's claim of optimality, by modifying Uehara or Uehara/Shirai in view of Schaffrina. (Italics added)

See previous argument regarding optimality. In addition, the Examiner maintains that the positioning of the camera as taught by Shirai (e.g., see Figs. 7 and 11) positions the camera to capture an image of the face of the individual, and since the position of the mouth is well known on the face (see Shirai, Fig. 11, item y1), the camera and side mounted microphones of Schaffrina (with position fixed relative to the camera, not necessarily at the bottom of the screen) would not



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cause a problem when trying to perform simultaneous camera and microphone positioning (e.g., when the camera is brought to an appropriate vertical position the fixed relative position of the microphones would be also be appropriately positioned relative to the individual's mouth).

9. Applicant asserts beginning on page 10:

At page 4, item 1 of the Final Office Action offers, by way of explanation, that *"it was well-know that closer proximity of both a camera and a microphone will improve the quality of the data obtained by each device."* Proximity to what? Presumably the Examiner is referring to "proximity to the subject," not to proximity between the camera and the microphone. It is unclear how moving the camera and the microphone closer to the subject, albeit not so close as to produce microphone noise, magically puts the camera and microphone on the same vertically translatable platform. In particular, having modified Uehara in view of Shirai, what would have motivated one of ordinary skill in the art to, in view of Schaffrina, relocate the microphone onto the same vertically movable platform as the camera? Impermissible hindsight of an Examiner who has looked at FIG. 1 and/or 2 of the present invention's disclosure. (Italics added)

The phrase being commented on here (in italics above) was given in claim 1 as a motivation for combining where the examiner believes that from context the meaning of "closer proximity" could be understood to mean "closer proximity to the to the user." Furthermore, the constraints imposed by Schaffrina's teachings (i.e., the natural positioning of camera, microphone and user within the kiosk) would preclude the case of the microphone being so close as to cause noise, and hence, a closer proximity to the user (given the constraints of vertical positioning) would improve the quality of the audio and video data. Also see ¶2, above.

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10. Applicant asserts on page 11:

Since the primary reference, Uehara, teaches away from the modification proposed, the proposed Uehara/Shirai/Schaffrina combination would not have been obvious, and, as set forth above, would in any event not meet the limitations of claim 1.

Contrary to teaching away from the microphone configuration suggested by Schaffrina, Uehara actually supplies a motivation for using the approach. Uehara states that "the person can speak unaffected by the presence of the microphone 12, and the person will not feel that he is forced to speak to the system." (col. 5, lines 17-20) The Examiner feels that an elevated microphone "tracking" an individual (see Uehara Fig. 2) would likely make its presence known, where in the approach taken by Schaffrina, the microphone is mounted in a side panel (easily hidden), and a user would be far less affected by its presence.

11. Applicant asserts on page 11:

The Advisory Action, in purported response to the above commentary, continues to ignore the analysis presented. In item 3, for example, in supposedly addressing the above comments regarding the lack of suggestion for detaching the Uehara microphone and moving it into fixed connection with the movable camera, the Advisory Action again alleges that applicant is attacking the references individually, but gives no clue as to how combining the references suggests more than the references viewed individually.

See the arguments given in ¶'s 2, 8, and 9, above.

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12. Applicant asserts on page 12:

Item 4 of the Advisory Action tries to minimize the importance of the discussion in Uehara that teaches away from the idea of modifying its microphone configuration. As stated above, Uehara says, starting at column 5, line 11, "According to the present apparatus, the microphone 12 with a sharp directivity can be effectively directed toward the mouth of the person C, thereby resulting in reliable collection of the speech made by the person at a high S/N ratio. The sharply directional microphone 12 used herewith can be provided at a distance from the person C without any loss in S/N ratio."

The response in item 4 of the Advisory Action is the Uehara "does not state that the disclosed configuration is optimal, nor that there is not some other way to obtain better results." It appears, however, that an inventor of a mechanical system will not often have the temerity to proclaim that his/her system is "optimal." Moreover, whether or not there exists, as item 4 states "some other way to obtain better results" is only relevant in the context of whether that "some other way to obtain better results" would have been obvious. Accordingly, it is believed that the commentary in item 4 of the Advisory Action is non-responsive to the analysis by the applicant that Uehara, in fact, teaches away from the idea of modifying its microphone configuration.

See argument above in ¶7. As an additional example, Uehara's need for a sharply directive microphone (col. 5, lines 15-20) would most likely be eased if the microphone could be placed closer to the user (as suggested by Uehara in view of Shirai and Schaffrina) possible reducing the cost of the system (i.e., Is it optimal to get the best S/N at any cost using a more expensive highly directional microphone, or the best S/N using a less expensive microphone).

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**Arguments relating to Issue B.**

The examiner notes that no arguments were given with regard to Issue B, thus no response is included.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

V. Paul Harper  
July 14, 2004



Conferees  
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